

REMARKS

In the non-final Office Action dated May 27, 2009 (paper no. 20090523), the Examiner rejected claims 1-5, 37-41, 44-45, and 52-57 under 35 U.S.C. § 103(a) over U.S. Patent Application Publication No. 2003/0110503 by Perkes ("Perkes"), U.S. Patent Application Publication No. 2002/0056123 by Ligerant et al. ("Ligerant"), and U.S. Patent No. 6,745,242 to Schick et al. ("Schick"); rejected claims 6 and 42 under 35 U.S.C. § 103(a) over Perkes, Ligerant, and U.S. Patent No. 6,854,010 to Christian et al. ("Christian"); rejected claim 7 under 35 U.S.C. § 103(a) over Perkes, Ligerant, and U.S. Patent No. 6,617,879 to Chung ("Chung"); rejected claims 8, 43, 46-49, and 51 under 35 U.S.C. § 103(a) over Perkes, Ligerant, and U.S. Patent Application Publication No. 2002/0152432 by Fleming ("Fleming"); and rejected claim 50 under 35 U.S.C. § 103(a) over Perkes, Ligerant, Fleming, and Christian.

In this response, applicant amends claims 1, 5, 37, 43, 44, and 55 to clarify the subject matter for which protection is sought. Claims 6 and 42 have been canceled. The features of claim 6 have been incorporated into independent claims 1 and 55. The features of claim 42 have been incorporated into independent claim 37. Claims 1-5, 7, 8, 37-41, and 43-57 are currently pending in this application.

A. Examiner Interview Summary

Applicant would like to thank the Examiner for the courtesy extended to applicant's representatives during the telephone interview on October 7, 2009. During the interview, the Examiner and applicant's representatives discussed independent claim 1. In addition, the Perkes and Ligerant references were discussed. If the Examiner would like applicant to submit additional information regarding the interview, applicant respectfully requests that the Examiner notify the undersigned attorney.

B. Perkes

Perkes describes a system for presenting media on demand. (Perkes, Abstract.) A viewer may view and/or schedule the delivery of broadcast segments. When a broadcaster is ready to deliver a broadcast segment to the viewer, Perkes determines the on line or off line status of the viewer's computer. If the viewer's computer is on line, the viewer is provided with information about the broadcast segment, and is given the option to accept or refuse download of the segment. If the viewer accepts, the segment is downloaded to the viewer's computer via the Internet. (Perkes, ¶¶ [0078], [0125].)

C. Liverant

Liverant describes a system for sharing a video segment over a computer network. (Liverant, Abstract.) Liverant may present a user with a web page form to collect information from the user in connection with a video segment, including payment information, specifications such as resolution and/or image quality, and an additional copy of the files, such as a copy recorded on CD-ROM and sent to the user by the postal service. (Liverant, ¶ [0052])

D. Christian

Christian describes a management system for multiple network transceivers. (Christian, Abstract.) Using a reporting functionality, a user can review information associated with the network transceivers including site name/ID, connectivity status, and a date and time stamp of the last communication with the transceiver. (Christian, 10:11-30.)

E. Rejections under 35 U.S.C. § 103(a)

Claims 1-5, 7, 8, 37-41, and 43-57 stand rejected under 35 U.S.C. § 103(a) over Perkes and Liverant, in some cases in combination with additional references, including Christian. Applicant respectfully traverses these rejections.

As amended, independent claims 1 and 55 recite "determining whether the time associated with a most recently received communication from the client system is within a certain time period." The feature of "the time associated with a most recently received communication from the client system" has been incorporated into independent claims 1 and 55 from dependent claim 6. In rejecting claim 6, the Examiner acknowledged that neither Perkes nor Liwerant discloses this recited feature, and cited to Christian at 10:11-30 to cure this deficiency. (Office Action, May 27, 2009, p. 13.)

The cited portion of Christian describes that, using a reporting functionality, a user can review information associated with one or more network transceivers. This information may include site name/ID, connectivity status, and a date and time stamp of the last communication with the transceiver. However, while Christian discloses a date and time stamp of a last communication, Christian fails to disclose determining whether the date and time stamp is within a certain time period, as recited. Christian further fails to disclose selecting a mechanism for sending an image on the basis of this determination.

Nor do the other applied references, whether alone or in combination with Christian, disclose or suggest "determining whether the time associated with a most recently received communication from the client system is within a certain time period." For example, at most, Perkes describes determining the on line or off line status of a viewer's computer. If the viewer's computer is on line, Perkes provides the viewer with information associated with a broadcast segment and allows the viewer to download the segment via the Internet. (Perkes, ¶¶ [0078], [01215].) However, simply determining the on line or off line status of a viewer's computer does not disclose or suggest any indication of a time associated with a most recently received communication from the viewer's computer, and in particular does not disclose or suggest a determination of whether the time associated with a most recently received communication from the client system is within a certain time period, as recited. The other references also fail to disclose selecting a mechanism for sending an image on the basis of this determination.

As amended, independent claims 1 and 55 also recite "if it is determined that the time associated with the most recently received communication from the client system is within the certain time period, sending the image to the client system via the communications link." Applicant respectfully submits that none of the applied references, whether alone or in combination, discloses or suggests this recited feature. As discussed above, Perkes describes downloading a broadcast segment to a viewer via the Internet, if the viewer accepts the segment. If the viewer does not accept the segment, the segment is not sent to the viewer. (Perkes, ¶¶ [0078], [0125].) Perkes does not disclose or suggest sending the broadcast segment to the viewer via the Internet if it is determined that the time associated with the most recently received communication from the client system is within the certain time period, as recited.

Nor does Christian, whether alone or in combination with Perkes, disclose or suggest "if it is determined that the time associated with the most recently received communication from the client system is within the certain time period, sending the image to the client system via the communications link," as recited by claims 1 and 55. While Christian discloses a date and time stamp of a last communication with a transceiver, Christian does not disclose or suggest determining whether the date and time stamp is within the certain time period, as recited. Nor does Christian disclose or suggest sending an image to the client system via the communications link if it is determined that the date and time stamp is within the certain time period.

As amended, claims 1 and 55 also recite "if it is determined that the time associated with the most recently received communication from the client system is not within the certain time period, sending the image to the client system via a mechanism other than the communications link." Applicant respectfully submits that none of the applied references, whether alone or in combination, discloses or suggests this recited feature. At most, Liverant describes sending a copy of content to a user by recording the content on a CD-ROM and sending it via the postal service. (Liverant, ¶ [0052].) Liverant does not disclose or suggest sending content via the postal service if it is

determined that the time associated with the most recently received communication from the client system is not within the certain time period, as recited.

Nor do the other applied references, whether alone or in combination with Ligerant, disclose or suggest "if it is determined that the time associated with the most recently received communication from the client system is not within the certain time period, sending the image to the client system via a mechanism other than the communications link," as recited by claims 1 and 55. While Christian discloses a date and time stamp of a last communication with a transceiver, Christian does not disclose or suggest determining whether the date and time stamp is not within the certain time period, as recited. Nor does Christian disclose or suggest sending an image to the client system via a mechanism other than the communications link if it is determined that the date and time stamp is not within the certain time period.

For at least these reasons, applicant respectfully submits that independent claims 1 and 55 patentable over the applied references, as are their dependent claims 2-5, 7, 8, 52, 56, and 57.

As amended, independent claim 37 recites:

a component that determines, for a package of images that is to be distributed to a client system, whether the package of images should be distributed to the client system via the communications link or via a mechanism other than the communications link based on when the client system last communicated with the image distribution computing system via the communications link.

The feature of "when the client system last communicated with the image distribution computing system via the communications link" has been incorporated into independent claim 37 from dependent claim 42. In rejecting claim 42, the Examiner acknowledged that neither Perkes nor Ligerant discloses this recited feature, and cited to Christian at 10:11-30 to cure this deficiency. (Office Action, May 27, 2009, p. 14.)

As discussed above, the cited portion of Christian describes that, using a reporting functionality, a user can review information associated with one or more

network transceivers. This information may include site name/ID, connectivity status, and a date and time stamp of the last communication with the transceiver. However, while Christian discloses a date and time stamp of a last communication, Christian fails to disclose determining whether content should be distributed to a network transceiver via a communications link or via a mechanism other than the communications link based on when the transceiver last communicated via the communications link.

Nor do the other applied references, whether alone or in combination with Christian, disclose or suggest:

a component that determines, for a package of images that is to be distributed to a client system, whether the package of images should be distributed to the client system via the communications link or via a mechanism other than the communications link based on when the client system last communicated with the image distribution computing system via the communications link,

as recited by claim 37. As discussed above, the cited portions of Perkes describe that when a broadcast segment is to be downloaded to a viewer, Perkes determines the on line or off line status of a viewer's computer. If the viewer's computer is on line, Perkes provides the viewer with information associated with the broadcast segment and allows the viewer to download the segment. If the viewer accepts the broadcast segment, the segment is downloaded via the Internet; otherwise, the segment is not sent to the viewer. (Perkes, ¶¶ [0078], [0125].) However, simply determining the on line or off line status of a viewer's computer does not disclose or suggest any indication of when the viewer's computer last communicated with Perkes' system via the Internet. Nor does Perkes disclose or suggest determining whether a broadcast segment should be sent to a viewer's computer via the Internet or a mechanism other than the Internet based on when the viewer's computer last communicated with Perkes' system via the Internet. Perkes either sends a broadcast segment to a viewer via the Internet or not at all.

Nor does Liverant, whether alone or in combination with Christian or Perkes, disclose or suggest:

a component that determines, for a package of images that is to be distributed to a client system, whether the package of images should be distributed to the client system via the communications link or via a mechanism other than the communications link based on when the client system last communicated with the image distribution computing system via the communications link,

as recited by claim 37. As discussed above, at most Liverant describes sending a copy of content to a user by recording the content on a CD-ROM and sending it via the postal service. (Liverant, ¶ [0052].) Liverant does not disclose or suggest any indication of when a client system last communicated via a communications link. Nor does Liverant disclose determining whether a package of images should be sent to a user via a communications link or via a CD-ROM through the postal service based on when the client system last communicated via the communications link.

The Examiner's citation to Perkes as disclosing sending content via the Internet and to Liverant as sending content via a CD-ROM does not satisfy the Examiner's burden. The Examiner has not cited a reference or combination of references that discloses determining which of multiple delivery mechanisms is to be used to send content. In particular, the Examiner has not cited a reference or combination of references that discloses or suggests:

a component that determines, for a package of images that is to be distributed to a client system, whether the package of images should be distributed to the client system via the communications link or via a mechanism other than the communications link based on when the client system last communicated with the image distribution computing system via the communications link,

as recited by claim 37. At most, Perkes and Liverant each disclose sending content via a single mechanism – the Internet or the postal service, respectively. Neither of these references, whether alone or in combination, discloses or suggest determining which of multiple delivery mechanisms is to be used to send content, let alone basing such a determination on when the client system last communicated with the image distribution computing system via the communications link.

For at least these reasons, applicant respectfully submits that independent claim 37 is patentable over the applied references, as are its dependent claims 38-41, 43-45, and 53.

Moreover, the Examiner has not articulated a rational apparent reason to combine the applied references to arrive at any of applicant's claims, and has thereby failed to establish a *prima facie* case of obviousness. (*KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007); *see also In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993).) "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal standard of obviousness." (*KSR*, 550 U.S. at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006))). The Examiner states that one of ordinary skill in the art would have been motivated to combine Ligerant and Perkes "for the purpose of providing for the user a convenient, an optimal viewing quality, enhanced security [sic]," and to combine Perkes and Christian "for the purpose of providing security to the workstations and any devices connected to the network transceiver." (Office Action, May 27, 2009, pp. 5, 14.) However, these statements are merely recitations of the objects of individual references (see Ligerant, ¶¶ [0059], [0139]; Christian, 2:28-41), rather than articulated reasons with rational underpinnings of why it would have been obvious to one skilled in the art to combine the applied references to arrive at any of applicant's claims.

F. Conclusion

In view of the above amendment and remarks, applicant believes the pending application is in condition for allowance and respectfully requests a prompt Notice of Allowance.

If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to contact Steven D. Lawrenz at (206) 359-8000.

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Respectfully submitted,

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